IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 566 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKHBHAI RAMCHANDRABHAI DESAI - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AM PAREKH for Applicant(s) : 1,
MR. H.M.PRACHHAK, APP for Respondent(s) : 1,
MR ADIL R MIRZA for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 15/09/2005

ORAL JUDGMENT

1.**RULE**. Mr. H.M.Prachhak, learned APP appears and waives service of notice of Rule on behalf of respondent no.1-State of Gujarat whereas Mr. Adil R. Mirza, learned

advocate appears and waives of notice of Rule on behalf of respondent no.2-original complainant.

2. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner-original accused seeks to challenge the judgement and order dated 20.7.2005 rendered in Criminal Appeal No. 14 of 2004 by the learned Sessions Judge, Navsari, by which the appeal filed by the petitioner came to be dismissed and thereby judgement and order dated 14.9.2004 rendered in Criminal Case No. 3752 of 2002 by the learned Chief Judicial Magistrate, Navsari, convicting and sentencing the petitioner for commission of the alleged offence under Section 138 of the Negotiable Instruments Act ('the Act' for short), has been upheld.

3. The petitioner is the original accused in the complaint filed by respondent no.2 under Section 138 of the Act. The learned JMFC, Navsari by order dated 14.9.2004 rendered in Criminal Case No. 3752 of 2002 has recorded the order of conviction convicting the petitioner for the offence under Section 138 of the Act and the petitioner was ordered to suffer SI for a period of 6 months and to pay fine of Rs.10,000/- and in default of payment of fine further SI for a period of 2 months.

4. Aggrieved thereby the petitioner preferred Criminal Appeal No. 14 of 2004 before the learned Additional Sessions Judge, Navsari. The same came to be dismissed vide judgement and order dated 20.7.2005 and thereby confirmed the order of conviction and sentence recorded by the learned Chief Judicial Magistrate, Navsari in Criminal Case No. 3752 of 2002, which has given rise to the present petition.

5. At the time of hearing of the petition, Mr. A.M.Parekh, learned advocate of the petitioner and Mr. Adil Mirza, learned advocate for respondent no.2 -original complainant, jointly submitted that the matter has been amicably settled between the parties outside the Court and as per the terms of settlement, the petitioner is willing to pay an amount of Rs.5,50,000/- for which cheque was issued by the petitioner in favour of respondent no.2, which was not honoured on presentation by respondent no.2. As per the settlement the petitioner has already issued 9 cheques of Rs.50,000/- each for a total amount of Rs.4,50,000/- in favour of respondent no.2 which has been accepted by respondent no.2. Besides this, petitioner has also deposited Rs.1 lac before this Court at the time of admission hearing. The petitioner also undertakes that all the 9 cheques will be honoured and respondent no.2 is ready and willing to accept all the 9 cheques from the petitioner and as per the settlement respondent no.2 shall be permitted to withdraw the amount of Rs.1 lac which has been deposited by the petitioner before this Court. They, therefore, urged that since the matter is amicably settled between the parties, the impugned judgement and order of conviction and sentence may be quashed and set aside. They, therefore, urged to pass appropriate orders.

6. Mr. H.M.Prachhak, learned APP for the respondent State also states that since the matter has been amicably settled between the parties, appropriate orders may be passed.

7. This Court has considered the submissions advanced by the learned advocates appearing for the parties,

perused the impugned judgement and order as well as consent terms, duly notarised before the Notary and signed by both the parties with their respective advocates and also the solemn undertaking tendered by the petitioner.

8. There is no dispute that the petitioner has issued cheque for Rs.5,50,000/- in favour of respondent no.2 which was not honoured on presentation by respondent no.2, therefore respondent no.2 filed complaint against the petitioner for commission of the alleged offence under Section 138 of the Act.

9. At the end of the trial the petitioner was convicted and sentenced to suffer SI for a period of 6 months and fine of Rs.10,000/-. In appeal the said judgement and order was confirmed.

10. In this petition both the parties have amicably settled the matter and as per the settlement the amount of Rs.5,50,000/- has been agreed to be paid by the petitioner in 9 equal installments by cheque and the remaining amount of Rs.1 lac which has been deposited with this Court, has been agreed to be withdrawn by respondent no.2 as per the consent terms.

11. On perusal of the consent terms which is notarised and signed by both the parties, it is seen that the petitioner has already issued 9 cheques of Rs.50,000/- each for a total amount of Rs.4,50,000/- in favour of respondent no.2 which has been accepted by respondent no.2. Besides this, petitioner has also deposited Rs.1 lac before this Court at the time of admission hearing. The petitioner also undertakes that all the 9 cheques will be honoured and respondent no.2 is ready and willing to accept all the 9 cheques from the petitioner

and as per the settlement respondent no.2 shall be permitted to withdraw the amount of Rs.1 lac which has been deposited by the petitioner before this Court. An undertaking to this effect has also been filed by the petitioner.

12.So far as the offence under the Act is concerned, in view of Section 147 of the Act, the offence is compoundable and since the parties have settled the matter amicably with a request to compound the offence, there cannot be any objection to this Court for compounding the offence.

13.In aforesaid view of the matter, this petition deserves to be allowed by quashing and setting aside the order of conviction and sentence imposed upon the petitioner.

14.For the foregoing reasons, the petition succeeds and accordingly it is allowed. The judgement and order 14.9.2004 rendered in Criminal Case No. 3752 of 2002 by the learned Chief Judicial Magistrate, Navsari, convicting and sentencing the petitioner for commission of the alleged offence under Section 138 of the Act, which has been affirmed by the learned Sessions Judge, Navsari, by judgement and order dated 20.7.2005 rendered in Criminal Appeal No. 14 of 2004, are hereby quashed and set aside. The petitioner, who is on bail, his bail bond stands canceled and surety is discharged. The Rule is made absolute accordingly.

15.The registry is directed to pay the amount of Rs.1 lac deposited by the petitioner before this Court to respondent no.2-original complainant, by A/c Payee Cheque drawn in his name. The said cheque shall be handed over to Mr. Adil Mirza, learned advocate of

respondent no.2.

16. The amount of fine of Rs.10,000/- deposited by the petitioner before the trial Court shall be refunded to the petitioner upon due verification.

17. Consent terms alongwith undertaking shall be retained on record of the case.

Direct service permitted.

(A.M.Kapadia,J)

Jayanti*